

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1329  
Committee Substitute Favorable 4/29/09  
Committee Substitute #2 Favorable 5/11/09  
Senate Judiciary I Committee Substitute Adopted 6/30/09

Short Title: Consolidate Expunction Statutes.

(Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES, TO MODIFY THE AGE REQUIREMENTS OF CERTAIN EXPUNCTIONS TO BE THE AGE AT THE TIME OF THE OFFENSE RATHER THAN THE AGE AT THE TIME OF CONVICTION, TO ALLOW THE EXPUNCTION OF MISDEMEANOR LARCENY, AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO THE EXPUNCTION STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.



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1           (3)   If the petition is filed subsequent to conviction of the offense in question, a  
2           statement that the petition is a motion in the cause in the case wherein the  
3           petitioner was convicted.

4           (4)   Affidavits of the clerk of superior court, chief of police, where appropriate,  
5           and sheriff of the county in which the petitioner was convicted and, if  
6           different, the county of which the petitioner is a resident, showing that the  
7           petitioner has not been convicted of a felony or misdemeanor other than a  
8           traffic violation under the laws of this State (i) during the period of probation  
9           since the decision to defer further proceedings on the offense in question  
10          pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the  
11          offense in question or during the two-year period following that conviction,  
12          whichever applies.

13          (5)   An affidavit by the petitioner that no restitution orders or civil judgments  
14          representing amounts ordered for restitution entered against the petitioner  
15          are outstanding.

16          The petition shall be served upon the district attorney of the court wherein the case was  
17          tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file  
18          any objection thereto and shall be duly notified as to the date of the hearing of the petition.

19          The judge to whom the petition is presented is authorized to call upon a probation officer  
20          for any additional investigation or verification of the petitioner's conduct during the  
21          probationary period or during the two-year period after conviction.

22          (b)   If the court, after hearing, finds that (i) the petitioner was dismissed and the  
23          proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had  
24          not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of  
25          good behavior and been free of conviction of any felony or misdemeanor other than a traffic  
26          violation for two years from the date of conviction of the offense in question, the petitioner has  
27          no outstanding restitution orders or civil judgments representing amounts ordered for restitution  
28          entered against him, and the petitioner had not attained the age of 18 years at the time of the  
29          offense in question, it shall order that such person be restored, in the contemplation of the law,  
30          to the status occupied by the petitioner before such arrest or indictment or information. No  
31          person as to whom such order has been entered shall be held thereafter under any provision of  
32          any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's  
33          failure to recite or acknowledge such arrest, or indictment or information, or trial, or response  
34          to any inquiry made of the person for any purpose. The court shall also order that the said  
35          conviction be expunged from the records of the court and direct all law enforcement agencies  
36          bearing record of the same to expunge their records of the conviction as the result of a criminal  
37          charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or  
38          other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall  
39          then transmit the copy of the order with a form supplied by the State Bureau of Investigation to  
40          the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order  
41          to the Federal Bureau of Investigation.

42          (c)   This section is supplemental and in addition to existing law and shall not be  
43          construed so as to repeal any existing provision contained in the General Statutes of North  
44          Carolina."

45          **SECTION 2.** Article 5 of Chapter 15A of the General Statutes is amended by  
46 adding a new section to read:

47          "§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the  
48          time of the offense of certain drug offenses.

49          (a)   Whenever a person is discharged, and the proceedings against the person dismissed,  
50          pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the  
51          offense, the person may apply to the court for an order to expunge from all official records

1 (other than the confidential file to be retained by the Administrative Office of the Courts under  
2 G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of  
3 guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the  
4 application the following:

- 5       (1) An affidavit by the applicant that he has been of good behavior during the  
6 period of probation since the decision to defer further proceedings on the  
7 offense in question and has not been convicted of any felony or  
8 misdemeanor other than a traffic violation under the laws of the United  
9 States or the laws of this State or any other state;
- 10       (2) Verified affidavits by two persons who are not related to the applicant or to  
11 each other by blood or marriage, that they know the character and reputation  
12 of the petitioner in the community in which he lives, and that his character  
13 and reputation are good;
- 14       (3) Affidavits of the clerk of superior court, chief of police, where appropriate,  
15 and sheriff of the county in which the petitioner was convicted, and, if  
16 different, the county of which the petitioner is a resident, showing that the  
17 applicant has not been convicted of a felony or misdemeanor other than a  
18 traffic violation under the laws of this State at any time prior to the  
19 conviction for the offense in question or during the period of probation  
20 following the decision to defer further proceedings on the offense in  
21 question.

22 The judge to whom the petition is presented is authorized to call upon a probation officer  
23 for any additional investigation or verification of the petitioner's conduct during the  
24 probationary period deemed desirable.

25 If the court determines, after hearing, that such person was discharged and the proceedings  
26 against him dismissed and that he was not over 21 years of age at the time of the offense, it  
27 shall enter such order. The effect of such order shall be to restore such person in the  
28 contemplation of the law to the status he occupied before such arrest or indictment or  
29 information. No person as to whom such order was entered shall be held thereafter under any  
30 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of  
31 his failures to recite or acknowledge such arrest, or indictment or information, or trial in  
32 response to any inquiry made of him for any purpose.

33 The court shall also order that said conviction and the records relating thereto be expunged  
34 from the records of the court and direct all law enforcement agencies bearing records of the  
35 same to expunge their records of the conviction. The clerk shall forward a certified copy of the  
36 order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff,  
37 chief of police, or other arresting agency, as appropriate, shall forward such order to the State  
38 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State  
39 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of  
40 Investigation.

41       (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90  
42 of the General Statutes by possessing a controlled substance included within Schedules II  
43 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under  
44 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of  
45 the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other  
46 adjudication of innocence, such person may apply to the court for an order to expunge from all  
47 official records all recordation relating to his arrest, indictment or information, or trial. If the  
48 court determines, after hearing, that such person was not over 21 years of age at the time the  
49 offense for which the person was charged occurred, it shall enter such order. No person as to  
50 whom such order has been entered shall be held thereafter under any provision of any law to be  
51 guilty of perjury or otherwise giving a false statement by reason of his failures to recite or

1 acknowledge such arrest, or indictment or information, or trial in response to any inquiry made  
2 of him for any purpose.

3 (c) Whenever any person who has not previously been convicted of an offense under  
4 Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any  
5 state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the  
6 General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General  
7 Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of  
8 Chapter 90 of the General Statutes by possessing a controlled substance included within  
9 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing  
10 drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by  
11 possessing less than one gram of cocaine, the court may, upon application of the person not  
12 sooner than 12 months after conviction, order cancellation of the judgment of conviction and  
13 expunction of the records of his arrest, indictment or information, trial, and conviction. A  
14 conviction in which the judgment of conviction has been canceled and the records expunged  
15 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this  
16 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of  
17 a crime, including the additional penalties imposed for second or subsequent convictions of  
18 Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this  
19 subsection may occur only once with respect to any person. Disposition of a case under this  
20 subsection at the district court division of the General Court of Justice shall be final for the  
21 purpose of appeal.

22 The granting of an application filed under this subsection shall cause the issue of an order to  
23 expunge from all official records (other than the confidential file to be retained by the  
24 Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the  
25 petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction,  
26 cancellation of the judgment, and expunction of records pursuant to this subsection.

27 The judge to whom the petition is presented is authorized to call upon a probation officer  
28 for additional investigation or verification of the petitioner's conduct since conviction. If the  
29 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of  
30 Chapter 90 of the General Statutes for possessing a controlled substance included within  
31 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing  
32 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) for  
33 possession of less than one gram of cocaine, that he was not over 21 years of age at the time of  
34 the offense, that he has been of good behavior since his conviction, that he has successfully  
35 completed a drug education program approved for this purpose by the Department of Health  
36 and Human Services, and that he has not been convicted of a felony or misdemeanor other than  
37 a traffic violation under the laws of this State at any time prior to or since the conviction for the  
38 offense in question, it shall enter an order of expunction of the petitioner's court record. The  
39 effect of such order shall be to restore the petitioner in the contemplation of the law to the  
40 status he occupied before arrest or indictment or information or conviction. No person as to  
41 whom such order was entered shall be held thereafter under any provision of any law to be  
42 guilty of perjury or otherwise giving a false statement by reason of his failures to recite or  
43 acknowledge such arrest, or indictment or information, or conviction, or trial in response to any  
44 inquiry made of him for any purpose. The judge may waive the condition that the petitioner  
45 attend the drug education school if the judge makes a specific finding that there was no drug  
46 education school within a reasonable distance of the defendant's residence or that there were  
47 specific extenuating circumstances which made it likely that the petitioner would not benefit  
48 from the program of instruction.

49 The court shall also order all law enforcement agencies bearing records of the conviction  
50 and records relating thereto to expunge their records of the conviction. The clerk shall forward  
51 a certified copy of the order to the sheriff, chief of police, or other arresting agency, as

1 appropriate, and the arresting agency shall forward the order to the State Bureau of  
2 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of  
3 Investigation shall forward the court order in like manner to the Federal Bureau of  
4 Investigation.

5 The clerk of superior court in each county in North Carolina shall, as soon as practicable  
6 after each term of court in his county, file with the Administrative Office of the Courts the  
7 names of those persons whose judgments of convictions have been canceled and expunged  
8 under the provisions of this subsection, and the Administrative Office of the Courts shall  
9 maintain a confidential file containing the names of persons whose judgments of convictions  
10 have been canceled and expunged. The information contained in the file shall be disclosed only  
11 to judges of the General Court of Justice of North Carolina for the purpose of ascertaining  
12 whether any person charged with an offense under Article 5 of Chapter 90 of the General  
13 Statutes has been previously granted cancellation and expunction of a judgment of conviction  
14 pursuant to the terms of this subsection.

15 (d) A person who files a petition for expunction of a criminal record under this section  
16 must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the time the petition  
17 is filed. Fees collected under this subsection shall be deposited in the General Fund. This  
18 subsection does not apply to petitions filed by an indigent."

19 **SECTION 3.** Article 5 of Chapter 15A of the General Statutes is amended by  
20 adding a new section to read:

21 "**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**  
22 **time of the offense of certain toxic vapors offenses.**

23 (a) Whenever a person is discharged and the proceedings against the person dismissed  
24 under G.S. 90-113.14(a) or (a1), such person, if he was not over 21 years of age at the time of  
25 the offense, may apply to the court for an order to expunge from all official records (other than  
26 the confidential file to be retained by the Administrative Office of the Courts under  
27 G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding  
28 of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the  
29 application the following:

- 30 (1) An affidavit by the applicant that he has been of good behavior during the  
31 period of probation since the decision to defer further proceedings on the  
32 misdemeanor in question and has not been convicted of any felony or  
33 misdemeanor other than a traffic violation under the laws of the United  
34 States or the laws of this State or any other state;
- 35 (2) Verified affidavits by two persons who are not related to the applicant or to  
36 each other by blood or marriage, that they know the character and reputation  
37 of the petitioner in the community in which he lives, and that his character  
38 and reputation are good;
- 39 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,  
40 and sheriff of the county in which the petitioner was convicted, and, if  
41 different, the county of which the petitioner is a resident, showing that the  
42 applicant has not been convicted of a felony or misdemeanor other than a  
43 traffic violation under the laws of this State at any time prior to the  
44 conviction for the misdemeanor in question or during the period of probation  
45 following the decision to defer further proceedings on the misdemeanor in  
46 question.

47 The judge to whom the petition is presented is authorized to call upon a probation officer  
48 for any additional investigation or verification of the petitioner's conduct during the  
49 probationary period deemed desirable.

50 If the court determines, after hearing, that such person was discharged and the proceedings  
51 against him dismissed and that he was not over 21 years of age at the time of the offense, it

1 shall enter such order. The effect of such order shall be to restore such person in the  
2 contemplation of the law to the status he occupied before such arrest or indictment or  
3 information. No person as to whom such order was entered shall be held thereafter under any  
4 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of  
5 his failures to recite or acknowledge such arrest, or indictment or information, or trial in  
6 response to any inquiry made of him for any purpose.

7 The court shall also order that said conviction and the records relating thereto be expunged  
8 from the records of the court and direct all law enforcement agencies bearing records of the  
9 same to expunge their records of the conviction. The clerk shall forward a certified copy of the  
10 order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff,  
11 chief of police, or other arresting agency, as appropriate, shall forward such order to the State  
12 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State  
13 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of  
14 Investigation.

15 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter  
16 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22,  
17 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon  
18 a finding of not guilty or other adjudication of innocence, such person may apply to the court  
19 for an order to expunge from all official records all recordation relating to his arrest, indictment  
20 or information, and trial. If the court determines, after hearing that such person was not over 21  
21 years of age at the time the offense for which the person was charged occurred, it shall enter  
22 such order. No person as to whom such order has been entered shall be held thereafter under  
23 any provision of any law to be guilty of perjury or otherwise giving a false statement by reason  
24 of his failures to recite or acknowledge such arrest, or indictment or information, or trial in  
25 response to any inquiry made of him for any purpose.

26 (c) Whenever any person who has not previously been convicted of an offense under  
27 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States  
28 or any state relating to controlled substances included in any schedule of Article 5 of Chapter  
29 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the  
30 General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A  
31 of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner  
32 than 12 months after conviction, order cancellation of the judgment of conviction and  
33 expunction of the records of his arrest, indictment or information, trial, and conviction. A  
34 conviction in which the judgment of conviction has been cancelled and the records expunged  
35 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this  
36 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of  
37 a crime, including the additional penalties imposed for second or subsequent convictions of  
38 violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction  
39 under this subsection may occur only once with respect to any person. Disposition of a case  
40 under this subsection at the district court division of the General Court of Justice shall be final  
41 for the purpose of appeal.

42 The granting of an application filed under this subsection shall cause the issue of an order to  
43 expunge from all official records (other than the confidential file to be retained by the  
44 Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his  
45 arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation  
46 of the judgment, and expunction of records pursuant to this subsection.

47 The judge to whom the petition is presented is authorized to call upon a probation officer  
48 for additional investigation or verification of the petitioner's conduct since conviction. If the  
49 court determines that the petitioner was convicted of a misdemeanor under Article 5A of  
50 Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by  
51 G.S. 90-113.22, that he was not over 21 years of age at the time of the offense, that he has been

1 of good behavior since his conviction, that he has successfully completed a drug education  
2 program approved for this purpose by the Department of Health and Human Services, and that  
3 he has not been convicted of a felony or misdemeanor other than a traffic violation under the  
4 laws of this State at any time prior to or since the conviction for the misdemeanor in question, it  
5 shall enter an order of expunction of the petitioner's court record. The effect of such order shall  
6 be to restore the petitioner in the contemplation of the law to the status he occupied before such  
7 arrest or indictment or information or conviction. No person as to whom such order was entered  
8 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise  
9 giving a false statement by reason of his failures to recite or acknowledge such arrest, or  
10 indictment or information, or conviction, or trial in response to any inquiry made of him for any  
11 purpose. The judge may waive the condition that the petitioner attend the drug education school  
12 if the judge makes a specific finding that there was no drug education school within a  
13 reasonable distance of the defendant's residence or that there were specific extenuating  
14 circumstances which made it likely that the petitioner would not benefit from the program of  
15 instruction.

16 The court shall also order all law enforcement agencies bearing records of the conviction  
17 and records relating thereto to expunge their records of the conviction. The clerk shall forward  
18 a certified copy of the order to the sheriff, chief of police, or other arresting agency, as  
19 appropriate, and the arresting agency shall forward the order to the State Bureau of  
20 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of  
21 Investigation shall forward the court order in like manner to the Federal Bureau of  
22 Investigation.

23 The clerk of superior court in each county in North Carolina shall, as soon as practicable  
24 after each term of court in his county, file with the Administrative Office of the Courts the  
25 names of those persons whose judgments of convictions have been cancelled and expunged  
26 under the provisions of this subsection, and the Administrative Office of the Courts shall  
27 maintain a confidential file containing the names of persons whose judgments of convictions  
28 have been cancelled and expunged. The information contained in the file shall be disclosed  
29 only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining  
30 whether any person charged with an offense under Article 5A of Chapter 90 of the General  
31 Statutes has been previously granted cancellation and expunction of a judgment of conviction  
32 pursuant to the terms of this subsection."

33 **SECTION 4.** G.S. 14-50.29 reads as rewritten:

34 **"§ 14-50.29. Conditional discharge for first offenders under the age of 18.**

35 (a) Whenever any person who ~~has not yet attained the age of 18 years, and~~ has not  
36 previously been convicted of any felony or misdemeanor other than a traffic violation under the  
37 laws of the United States or the laws of this State or any other state, pleads guilty to or is guilty  
38 of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, and  
39 the offense was committed before the person attained the age of 18 years, the court may,  
40 without entering a judgment of guilt and with the consent of the defendant, defer further  
41 proceedings and place the defendant on probation upon such reasonable terms and conditions  
42 as the court may require.

43 (b) If the court, in its discretion, defers proceedings pursuant to this section, it shall  
44 place the defendant on supervised probation for not less than one year, in addition to any other  
45 conditions. Prior to taking any action to discharge and dismiss under this section, the court shall  
46 make a finding that the defendant has no previous criminal convictions. Upon fulfillment of the  
47 terms and conditions of the probation provided for in this section, the court shall discharge the  
48 defendant and dismiss the proceedings against the defendant.

49 (c) Discharge and dismissal under this section shall be without court adjudication of  
50 guilt and shall not be deemed a conviction for purposes of this section or for purposes of  
51 disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and

1 dismissal under this section may occur only once with respect to any person. Disposition of a  
2 case to determine discharge and dismissal under this section at the district court division of the  
3 General Court of Justice shall be final for the purpose of appeal. Upon violation of a term or  
4 condition of the probation provided for in this section, the court may enter an adjudication of  
5 guilt and proceed as otherwise provided.

6 (d) Upon discharge and dismissal pursuant to this section, the person may apply for an  
7 order to expunge the complete record of the proceedings resulting in the dismissal and  
8 discharge, pursuant to the procedures and requirements set forth in  
9 ~~G.S. 14-50.30(a), G.S. 15A-145.1. If the court determines, after hearing, that such person was~~  
10 ~~dismissed and the proceedings against the person discharged and that the person had not yet~~  
11 ~~attained 18 years of age at the time of the offense, it shall enter such order. The effect of such~~  
12 ~~order shall be to restore such person in the contemplation of the law to the status the person~~  
13 ~~occupied before such arrest or indictment or information.~~

14 (e) The clerk of superior court in each county in North Carolina shall, as soon as  
15 practicable after each term of court in his county, file with the Administrative Office of the  
16 Courts the names of those persons granted a discharge under the provisions of this section, and  
17 the Administrative Office of the Courts shall maintain a confidential file containing the names  
18 of persons granted conditional discharges. The information contained in such file shall be  
19 disclosed only to judges of the General Court of Justice of North Carolina for the purpose of  
20 ascertaining whether any person charged with an offense has been previously granted a  
21 discharge."

22 **SECTION 5.** G.S. 14-50.30 reads as rewritten:

23 **"§ 14-50.30. Expunction of records.**

24 (a) ~~Whenever any~~ Any person who has not yet attained the age of 18 years and has not  
25 previously been convicted of any felony or misdemeanor other than a traffic violation under the  
26 laws of the United States or the laws of this State or any other state, may, if the offense was  
27 committed before the person attained the age of 18 years, be eligible to apply for expunction of  
28 certain offenses under this Article pursuant to G.S. 15A-145.1. ~~pleads guilty to or is guilty of (i)~~  
29 ~~a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person~~  
30 ~~may file a petition in the court where the person was convicted for expunction of the offense~~  
31 ~~from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and~~  
32 ~~dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction~~  
33 ~~or (ii) the completion of any period of probation, whichever occurs later. The petition shall~~  
34 ~~contain, but not be limited to, the following:~~

- 35 (1) An affidavit by the petitioner that the petitioner has been of good behavior  
36 (i) ~~during the period of probation since the decision to defer further~~  
37 ~~proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)~~  
38 ~~during the two year period since the date of conviction of the offense in~~  
39 ~~question, whichever applies, and has not been convicted of any felony, or~~  
40 ~~misdemeanor other than a traffic violation, under the laws of the United~~  
41 ~~States or the laws of this State or any other state.~~
- 42 (2) ~~Verified affidavits of two persons who are not related to the petitioner or to~~  
43 ~~each other by blood or marriage, that they know the character and reputation~~  
44 ~~of the petitioner in the community in which the petitioner lives, and that the~~  
45 ~~petitioner's character and reputation are good.~~
- 46 (3) ~~If the petition is filed subsequent to conviction of the offense in question, a~~  
47 ~~statement that the petition is a motion in the cause in the case wherein the~~  
48 ~~petitioner was convicted.~~
- 49 (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~  
50 ~~and sheriff of the county in which the petitioner was convicted and, if~~  
51 ~~different, the county of which the petitioner is a resident, showing that the~~



1 petitioner has not been convicted of a felony or misdemeanor other than a  
2 traffic violation under the laws of this State (i) during the period of probation  
3 since the decision to defer further proceedings on the offense in question  
4 pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the  
5 offense in question or during the two-year period following that conviction,  
6 whichever applies.

- 7 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
8 representing amounts ordered for restitution entered against the petitioner  
9 are outstanding.

10 The petition shall be served upon the district attorney of the court wherein the case was  
11 tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file  
12 any objection thereto and shall be duly notified as to the date of the hearing of the petition.

13 The judge to whom the petition is presented is authorized to call upon a probation officer  
14 for any additional investigation or verification of the petitioner's conduct during the  
15 probationary period or during the two-year period after conviction.

16 (b) If the court, after hearing, finds that the petitioner has remained of good behavior  
17 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two  
18 years from the date of conviction of the offense in question, the petitioner has no outstanding  
19 restitution orders or civil judgments representing amounts ordered for restitution entered  
20 against him, and the petitioner had not attained the age of 18 years at the time of the conviction  
21 in question, it shall order that such person be restored, in the contemplation of the law, to the  
22 status occupied by the petitioner before such arrest or indictment or information. No person as  
23 to whom such order has been entered shall be held thereafter under any provision of any laws  
24 to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to  
25 recite or acknowledge such arrest, or indictment, information, or trial, or response to any  
26 inquiry made of the person for any purpose. The court shall also order that the said conviction  
27 be expunged from the records of the court, and direct all law enforcement agencies bearing  
28 record of the same to expunge their records of the conviction as the result of a criminal charge.  
29 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other  
30 arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit  
31 the copy of the order with a form supplied by the State Bureau of Investigation to the State  
32 Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the  
33 Federal Bureau of Investigation.

34 (c) This section is supplemental and in addition to existing law and shall not be  
35 construed so as to repeal any existing provision contained in the General Statutes of North  
36 Carolina."

37 **SECTION 6.** G.S. 90-96 reads as rewritten:

38 **"§ 90-96. Conditional discharge and expunction of records for first offense.**

39 (a) Whenever any person who has not previously been convicted of any offense under  
40 this Article or under any statute of the United States or any state relating to those substances  
41 included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of  
42 Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by  
43 possessing a controlled substance included within Schedules II through VI of this Article or by  
44 possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21~~, G.S. 90-113.22, or (ii) a felony  
45 under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without  
46 entering a judgment of guilt and with the consent of such person, defer further proceedings and  
47 place him on probation upon such reasonable terms and conditions as it may require.  
48 Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may  
49 be imposed under this section for an offense under this Article for which the prescribed  
50 punishment includes only a fine. To fulfill the terms and conditions of probation the court may  
51 allow the defendant to participate in a drug education program approved for this purpose by the

1 Department of Health and Human Services. Upon violation of a term or condition, the court  
2 may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the  
3 terms and conditions, the court shall discharge such person and dismiss the proceedings against  
4 him. Discharge and dismissal under this section shall be without court adjudication of guilt and  
5 shall not be deemed a conviction for purposes of this section or for purposes of  
6 disqualifications or disabilities imposed by law upon conviction of a crime including the  
7 additional penalties imposed for second or subsequent convictions under this Article. Discharge  
8 and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any  
9 person. Disposition of a case to determine discharge and dismissal under this section at the  
10 district court division of the General Court of Justice shall be final for the purpose of appeal.  
11 Prior to taking any action to discharge and dismiss under this section the court shall make a  
12 finding that the defendant has no record of previous convictions under the "North Carolina  
13 Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act",  
14 Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

15 (a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or  
16 ~~G.S. 90-113.21~~G.S. 90-113.22 and subject to the provisions of this subsection (a1), the court  
17 may place defendant on probation under this section for an offense under this Article including  
18 an offense for which the prescribed punishment includes only a fine. The probation, if imposed,  
19 shall be for not less than one year and shall contain a minimum condition that the defendant  
20 who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of  
21 the date of the imposition of said probation, the program of instruction at the drug education  
22 school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01.  
23 The court may impose probation that does not contain a condition that defendant successfully  
24 complete the program of instruction at a drug education school if:

- 25 (1) There is no drug education school within a reasonable distance of the  
26 defendant's residence; or
- 27 (2) There are specific, extenuating circumstances which make it likely that  
28 defendant will not benefit from the program of instruction.

29 The court shall enter such specific findings in the record; provided that in the case of  
30 subdivision (2) above, such findings shall include the specific, extenuating circumstances  
31 which make it likely that the defendant will not benefit from the program of instruction.

32 Upon fulfillment of the terms and conditions of the probation, the court shall discharge such  
33 person and dismiss the proceedings against the person.

34 For the purposes of determining whether the conviction is a first conviction or whether a  
35 person has already had discharge and dismissal, no prior offense occurring more than seven  
36 years before the date of the current offense shall be considered. In addition, convictions for  
37 violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or  
38 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

39 Failure to complete successfully an approved program of instruction at a drug education  
40 school shall constitute grounds to revoke probation pursuant to this subsection and deny  
41 application for expunction of all recordation of defendant's arrest, indictment, or information,  
42 trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~G.S. 15A-145.2. For  
43 purposes of this subsection, the phrase "failure to complete successfully the prescribed program  
44 of instruction at a drug education school" includes failure to attend scheduled classes without a  
45 valid excuse, failure to complete the course within 150 days of imposition of probation, willful  
46 failure to pay the required fee for the ~~course~~course as provided in G.S. 90-96.01(b), or any  
47 other manner in which the person fails to complete the course successfully. The instructor of  
48 the course to which a person is assigned shall report any failure of a person to complete  
49 successfully the program of instruction to the court which imposed probation. Upon receipt of  
50 the instructor's report that the person failed to complete the program successfully, the court  
51 shall revoke ~~probation and/or~~ probation, shall not discharge such person, shall not dismiss the

1 proceedings against the person, and shall deny application for expunction of all recordation of  
2 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and  
3 discharge pursuant to ~~this section~~. G.S. 15A-145.2. A person may obtain a hearing before the  
4 court of original jurisdiction prior to revocation of probation or denial of application for  
5 expunction.

6 This subsection is supplemental and in addition to existing law and shall not be construed  
7 so as to repeal any existing provision contained in the General Statutes of North Carolina.

8 (b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the  
9 proceedings against him under subsection (a) or (a1) of this section, such person, if he were not  
10 over 21 years of age at the time of the offense, may be eligible to apply for expunction of  
11 certain records relating to the offense pursuant to G.S. 15A-145.2(a). ~~may apply to the court for~~  
12 ~~an order to expunge from all official records (other than the confidential file to be retained by~~  
13 ~~the Administrative Office of the Courts under subsection (c)) all recordation relating to his~~  
14 ~~arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant~~  
15 ~~to this section. The applicant shall attach to the application the following:~~

- 16 (1) ~~An affidavit by the applicant that he has been of good behavior during the~~  
17 ~~period of probation since the decision to defer further proceedings on the~~  
18 ~~offense in question and has not been convicted of any felony, or~~  
19 ~~misdemeanor, other than a traffic violation, under the laws of the United~~  
20 ~~States or the laws of this State or any other state;~~
- 21 (2) ~~Verified affidavits by two persons who are not related to the applicant or to~~  
22 ~~each other by blood or marriage, that they know the character and reputation~~  
23 ~~of the petitioner in the community in which he lives, and that his character~~  
24 ~~and reputation are good;~~
- 25 (3) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~  
26 ~~and sheriff of the county in which the petitioner was convicted, and, if~~  
27 ~~different, the county of which the petitioner is a resident, showing that the~~  
28 ~~applicant has not been convicted of a felony or misdemeanor other than a~~  
29 ~~traffic violation under the laws of this State at any time prior to the~~  
30 ~~conviction for the offense in question or during the period of probation~~  
31 ~~following the decision to defer further proceedings on the offense in~~  
32 ~~question.~~

33 ~~The judge to whom the petition is presented is authorized to call upon a probation officer~~  
34 ~~for any additional investigation or verification of the petitioner's conduct during the~~  
35 ~~probationary period deemed desirable.~~

36 ~~If the court determines, after hearing, that such person was dismissed and the proceedings~~  
37 ~~against him discharged and that he was not over 21 years of age at the time of the offense, it~~  
38 ~~shall enter such order. The effect of such order shall be to restore such person in the~~  
39 ~~contemplation of the law to the status he occupied before such arrest or indictment or~~  
40 ~~information. No person as to whom such order was entered shall be held thereafter under any~~  
41 ~~provision of any law to be guilty of perjury or otherwise giving a false statement by reason of~~  
42 ~~his failures to recite or acknowledge such arrest, or indictment or information, or trial in~~  
43 ~~response to any inquiry made of him for any purpose.~~

44 ~~The court shall also order that said conviction and the records relating thereto be expunged~~  
45 ~~from the records of the court, and direct all law enforcement agencies bearing records of the~~  
46 ~~same to expunge their records of the conviction. The clerk shall forward a certified copy of the~~  
47 ~~order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,~~  
48 ~~chief of police or other arresting agency, as appropriate, shall forward such order to the State~~  
49 ~~Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State~~  
50 ~~Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of~~  
51 ~~Investigation.~~

1 (c) The clerk of superior court in each county in North Carolina shall, as soon as  
2 practicable after each term of court in his county, file with the Administrative Office of the  
3 Courts the names of those persons granted a conditional discharge under the provisions of this  
4 Article, and the Administrative Office of the Courts shall maintain a confidential file containing  
5 the names of persons granted conditional discharges. The information contained in the file shall  
6 be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of  
7 ascertaining whether any person charged with an offense under this Article has been previously  
8 granted a conditional discharge.

9 (d) Whenever any person is charged with a misdemeanor under this Article by  
10 possessing a controlled substance included within Schedules II through VI of this Article or a  
11 felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by  
12 the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not  
13 guilty or other adjudication of innocence, the person may be eligible to apply for expunction of  
14 certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to~~  
15 ~~the court for an order to expunge from all official records all recordation relating to his arrest,~~  
16 ~~indictment or information, or trial. If the court determines, after hearing that such person was~~  
17 ~~not over 21 years of age at the time any of the proceedings against him occurred, it shall enter~~  
18 ~~such order. No person as to whom such order has been entered shall be held thereafter under~~  
19 ~~any provision of any law to be guilty of perjury or otherwise giving a false statement by reason~~  
20 ~~of his failures to recite or acknowledge such arrest, or indictment or information, or trial in~~  
21 ~~response to any inquiry made of him for any purpose.~~

22 (e) Whenever any person who has not previously been convicted of an offense under  
23 this Article or under any statute of the United States or any state relating to controlled  
24 substances included in any schedule of this Article or to that paraphernalia included in Article  
25 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a  
26 misdemeanor under this Article by possessing a controlled substance included within Schedules  
27 II through VI of this Article, or by possessing drug paraphernalia as prohibited by  
28 G.S. 90-113.21, G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than  
29 one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and  
30 expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).~~the court~~  
31 ~~may, upon application of the person not sooner than 12 months after conviction, order~~  
32 ~~cancellation of the judgment of conviction and expunction of the records of his arrest,~~  
33 ~~indictment, or information, trial and conviction. A conviction in which the judgment of~~  
34 ~~conviction has been canceled and the records expunged pursuant to this section shall not be~~  
35 ~~thereafter deemed a conviction for purposes of this section or for purposes of disqualifications~~  
36 ~~or liabilities imposed by law upon conviction of a crime including the additional penalties~~  
37 ~~imposed for second or subsequent convictions of this Article. Cancellation and expunction~~  
38 ~~under this section may occur only once with respect to any person. Disposition of a case under~~  
39 ~~this section at the district court division of the General Court of Justice shall be final for the~~  
40 ~~purpose of appeal.~~

41 ~~The granting of an application filed under this section shall cause the issue of an order to~~  
42 ~~expunge from all official records (other than the confidential file to be retained by the~~  
43 ~~Administrative Office of the Courts under subsection (e)) all recordation relating to the~~  
44 ~~petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction,~~  
45 ~~cancellation of the judgment, and expunction of records pursuant to this section.~~

46 ~~The judge to whom the petition is presented is authorized to call upon a probation officer~~  
47 ~~for additional investigation or verification of the petitioner's conduct since conviction. If the~~  
48 ~~court determines that the petitioner was convicted of (i) a misdemeanor under this Article for~~  
49 ~~possessing a controlled substance included within Schedules II through VI of this Article, or for~~  
50 ~~possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under~~  
51 ~~G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years~~

1 of age at the time of the offense, that he has been of good behavior since his conviction, that he  
2 has ~~successfully completed a drug education program approved for this purpose by the~~  
3 ~~Department of Health and Human Services, and that he has not been convicted of a felony or~~  
4 ~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or~~  
5 ~~since the conviction for the offense in question, it shall enter an order of expunction of the~~  
6 ~~petitioner's court record. The effect of such order shall be to restore the petitioner in the~~  
7 ~~contemplation of the law to the status he occupied before arrest or indictment or information or~~  
8 ~~conviction. No person as to whom such order was entered shall be held thereafter under any~~  
9 ~~provision of any law to be guilty of perjury or otherwise giving a false statement by reason of~~  
10 ~~his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or~~  
11 ~~trial in response to any inquiry made of him for any purpose. The judge may waive the~~  
12 ~~condition that the petitioner attend the drug education school if the judge makes a specific~~  
13 ~~finding that there was no drug education school within a reasonable distance of the defendant's~~  
14 ~~residence or that there were specific extenuating circumstances which made it likely that the~~  
15 ~~petitioner would not benefit from the program of instruction.~~

16 ~~The court shall also order that all law enforcement agencies bearing records of the~~  
17 ~~conviction and records relating thereto to expunge their records of the conviction. The clerk~~  
18 ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting~~  
19 ~~agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of~~  
20 ~~Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of~~  
21 ~~Investigation shall forward the court order in like manner to the Federal Bureau of~~  
22 ~~Investigation.~~

23 ~~The clerk of superior court in each county in North Carolina shall, as soon as practicable~~  
24 ~~after each term of court in his county, file with the Administrative Office of the Courts the~~  
25 ~~names of those persons whose judgments of convictions have been canceled and expunged~~  
26 ~~under the provisions of this Article, and the Administrative Office of the Courts shall maintain~~  
27 ~~a confidential file containing the names of persons whose judgments of convictions have been~~  
28 ~~canceled and expunged. The information contained in the file shall be disclosed only to judges~~  
29 ~~of the General Court of Justice of North Carolina for the purpose of ascertaining whether any~~  
30 ~~person charged with an offense under this Article has been previously granted cancellation and~~  
31 ~~expunction of a judgment of conviction pursuant to the terms of this Article.~~

32 ~~(f) A person who files a petition for expunction of a criminal record under this section~~  
33 ~~must pay the clerk of superior court a fee of sixty five dollars (\$65.00) at the time the petition~~  
34 ~~is filed. Fees collected under this subsection shall be deposited in the General Fund. This~~  
35 ~~subsection does not apply to petitions filed by an indigent."~~

36 **SECTION 7.** G.S. 90-113.14 reads as rewritten:

37 **"§ 90-113.14. Conditional discharge and expunction of records for first offenses.**

38 (a) Whenever any person who has not previously been convicted of any offense under  
39 this Article or under any statute of the United States or any state relating to those substances  
40 included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or  
41 possessing any substance having the property of releasing toxic vapors or fumes in violation of  
42 Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the  
43 consent of such person, defer further proceedings and place him on probation upon such  
44 reasonable terms and conditions as it may require. Notwithstanding the provisions of  
45 G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for  
46 an offense under this Article for which the prescribed punishment includes only a fine. To  
47 fulfill the terms and conditions of probation the court may allow the defendant to participate in  
48 a drug education program approved for this purpose by the Department of Health and Human  
49 Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and  
50 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall  
51 discharge such person and dismiss the proceedings against him. Discharge and dismissal under

1 this section shall be without court adjudication of guilt and shall not be deemed a conviction for  
2 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon  
3 conviction of a crime including the additional penalties imposed for second or subsequent  
4 convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once  
5 with respect to any person. Disposition of a case to determine discharge and dismissal under  
6 this section at the district court division of the General Court of Justice shall be final for the  
7 purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court  
8 shall make a finding that the defendant has no record of previous convictions under the "North  
9 Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled  
10 Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter  
11 90.

12 (a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or  
13 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant  
14 on probation under this section for an offense under this Article including an offense for which  
15 the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less  
16 than one year and shall contain a minimum condition that the defendant who was found guilty  
17 or pleads guilty enroll in and successfully complete, within 150 days of the date of the  
18 imposition of said probation, the program of instruction at the drug education school approved  
19 by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may  
20 impose probation that does not contain a condition that defendant successfully complete the  
21 program of instruction at a drug education school if:

22 (1) There is no drug education school within a reasonable distance of the  
23 defendant's residence; or

24 (2) There are specific, extenuating circumstances which make it likely that  
25 defendant will not benefit from the program of instruction.

26 The court shall enter such specific findings in the record; provided that in the case of subsection  
27 (2) above, such findings shall include the specific, extenuating circumstances which make it  
28 likely that the defendant will not benefit from the program of instruction.

29 Upon fulfillment of the terms and conditions of the probation, the court shall discharge such  
30 person and dismiss the proceedings against the person.

31 For the purpose of determining whether the conviction is a first conviction or whether a  
32 person has already had discharge and dismissal, no prior offense occurring more than seven  
33 years before the date of the current offense shall be considered. In addition, convictions for  
34 violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or  
35 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

36 Failure to complete successfully an approved program of instruction at a drug education  
37 school shall constitute grounds to revoke probation pursuant to this subsection and deny  
38 application for expunction of all recordation of defendant's arrest, indictment, or information,  
39 trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.3. For  
40 purposes of this subsection, the phrase "failure to complete successfully the prescribed program  
41 of instruction at a drug education school" includes failure to attend scheduled classes without a  
42 valid excuse, failure to complete the course within 150 days of imposition of probation, willful  
43 failure to pay the required fee for the ~~course~~ course as provided in G.S. 90-96.01(b), or any  
44 other manner in which the person fails to complete the course successfully. The instructor of  
45 the course to which a person is assigned shall report any failure of a person to complete  
46 successfully the program of instruction to the court which imposed probation. Upon receipt of  
47 the instructor's report that the person failed to complete the program successfully, the court  
48 shall revoke ~~probation and/or probation~~, shall not discharge such person, shall not dismiss the  
49 proceedings against the person, and shall deny application for expunction of all recordation of  
50 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and  
51 discharge pursuant to ~~this section~~ G.S. 15A-145.3. A person may obtain a hearing before the

1 court of original jurisdiction prior to revocation of probation or denial of application for  
2 expunction.

3 This subsection is supplemental and in addition to existing law and shall not be construed  
4 so as to repeal any existing provision contained in the General Statutes of North Carolina.

5 (b) Upon the dismissal of such person, and discharge of the proceedings against him  
6 under subsection (a) ~~or (a1)~~ of this section, such person, if he were not over 21 years of age at  
7 the time of the offense, may be eligible to apply for expunction of certain records relating to the  
8 offense pursuant to G.S. 15A-145.3(a).~~may apply to the court for an order to expunge from all~~  
9 ~~official records (other than the confidential file to be retained by the Administrative Office of~~  
10 ~~the Courts under subsection (c)) all recordation relating to his arrest, indictment or information,~~  
11 ~~trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall~~  
12 ~~attach to the application the following:~~

- 13 (1) ~~An affidavit by the applicant that he has been of good behavior during the~~  
14 ~~period of probation since the decision to defer further proceedings on the~~  
15 ~~misdemeanor in question and has not been convicted of any felony, or~~  
16 ~~misdemeanor, other than a traffic violation, under the laws of the United~~  
17 ~~States or the laws of this State or any other state;~~
- 18 (2) ~~Verified affidavits by two persons who are not related to the applicant or to~~  
19 ~~each other by blood or marriage, that they know the character and reputation~~  
20 ~~of the petitioner in the community in which he lives, and that his character~~  
21 ~~and reputation are good;~~
- 22 (3) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~  
23 ~~and sheriff of the county in which the petitioner was convicted, and, if~~  
24 ~~different, the county of which the petitioner is a resident, showing that the~~  
25 ~~applicant has not been convicted of a felony or misdemeanor other than a~~  
26 ~~traffic violation under the laws of this State at any time prior to the~~  
27 ~~conviction for the misdemeanor in question or during the period of probation~~  
28 ~~following the decision to defer further proceedings on the misdemeanor in~~  
29 ~~question.~~

30 ~~The judge to whom the petition is presented is authorized to call upon a probation officer~~  
31 ~~for any additional investigation or verification of the petitioner's conduct during the~~  
32 ~~probationary period deemed desirable.~~

33 ~~If the court determines, after hearing, that such person was dismissed and the proceedings~~  
34 ~~against him discharged and that he was not over 21 years of age at the time of the offense, it~~  
35 ~~shall enter such order. The effect of such order shall be to restore such person in the~~  
36 ~~contemplation of the law to the status he occupied before such arrest or indictment or~~  
37 ~~information. No person as to whom such order was entered shall be held thereafter under any~~  
38 ~~provision of any law to be guilty of perjury or otherwise giving a false statement by reason of~~  
39 ~~his failures to recite or acknowledge such arrest, or indictment or information, or trial in~~  
40 ~~response to any inquiry made of him for any purpose.~~

41 ~~The court shall also order that said conviction and the records relating thereto be expunged~~  
42 ~~from the records of the court, and direct all law enforcement agencies bearing records of the~~  
43 ~~same to expunge their records of the conviction. The clerk shall forward a certified copy of the~~  
44 ~~order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,~~  
45 ~~chief of police or other arresting agency, as appropriate, shall forward such order to the State~~  
46 ~~Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State~~  
47 ~~Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of~~  
48 ~~Investigation.~~

49 (c) The clerk of superior court in each county in North Carolina shall, as soon as  
50 practicable after each term of court in his county, file with the Commission, the names of all  
51 persons convicted under such Articles, together with the offense or offenses of which such

1 persons were convicted. The clerk shall also file with the Administrative Office of the Courts  
2 the names of those persons granted a conditional discharge under the provisions of this Article,  
3 and the Administrative Office of the Court shall maintain a confidential file containing the  
4 names of persons granted conditional discharges. The information contained in such file shall  
5 be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of  
6 ascertaining whether any person charged with an offense under Article 5 or 5A has been  
7 previously granted a conditional discharge.

8 (d) Whenever any person is charged with a misdemeanor under this Article ~~by~~  
9 ~~possessing a controlled substance included within Schedules II through VI of this Article, or by~~  
10 ~~or possessing drug paraphernalia as prohibited by G.S. 90-113.21~~G.S. 90-113.22 upon  
11 dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a  
12 finding of not guilty or other adjudication of innocence, the person may be eligible to apply for  
13 expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person~~  
14 ~~may apply to the court for an order to expunge from all official records all recordation relating~~  
15 ~~to his arrest, indictment, or information, and trial. If the court determines, after hearing that~~  
16 ~~such person was not over 21 years of age at the time any of the proceedings against him~~  
17 ~~occurred, it shall enter such order. No person as to whom such order has been entered shall be~~  
18 ~~held thereafter under any provision of any law to be guilty of perjury or otherwise giving a~~  
19 ~~false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or~~  
20 ~~information, or trial in response to any inquiry made of him for any purpose.~~

21 (e) Whenever any person who has not previously been convicted of an offense under  
22 this Article or under any statute of the United States or any state relating to controlled  
23 substances included in any schedule of ~~this Article~~Article 5 of Chapter 90 of the General  
24 Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes  
25 pleads guilty to or has been found guilty of a misdemeanor under this Article ~~by possessing a~~  
26 ~~controlled substance included within Schedules II through VI of this Article, the person may be~~  
27 ~~eligible to apply for cancellation of the judgment and expunction of certain records related~~  
28 ~~to the offense pursuant to G.S. 15A-145.3(c).~~the court may, upon application of the person not  
29 sooner than 12 months after conviction, order cancellation of the judgment of conviction and  
30 expunction of the records of his arrest, indictment, or information, trial and conviction. A  
31 conviction in which the judgment of conviction has been cancelled and the records expunged  
32 pursuant to this section shall not be thereafter deemed a conviction for purposes of this section  
33 or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime  
34 including the additional penalties imposed for second or subsequent convictions of this Article.  
35 Cancellation and expunction under this section may occur only once with respect to any person.  
36 Disposition of a case under this section at the district court division of the General Court of  
37 Justice shall be final for the purpose of appeal.

38 The granting of an application filed under this section shall cause the issue of an order to  
39 expunge from all official records (other than the confidential file to be retained by the  
40 Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest,  
41 indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the  
42 judgment, and expunction of records pursuant to this section.

43 The judge to whom the petition is presented is authorized to call upon a probation officer  
44 for additional investigation or verification of the petitioner's conduct since conviction. If the  
45 court determines that the petitioner was convicted of a misdemeanor under this Article for  
46 possessing a controlled substance included within Schedules II through VI of this Article, or for  
47 possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of  
48 age at the time of the offense, that he has been of good behavior since his conviction, that he  
49 has successfully completed a drug education program approved for this purpose by the  
50 Department of Health and Human Services, and that he has not been convicted of a felony or  
51 misdemeanor other than a traffic violation under the laws of this State at any time prior to or



1 since the conviction for the misdemeanor in question, it shall enter an order of expunction of  
2 the petitioner's court record. The effect of such order shall be to restore the petitioner in the  
3 contemplation of the law to the status he occupied before such arrest or indictment or  
4 information or conviction. No person as to whom such order was entered shall be held  
5 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false  
6 statement by reason of his failures to recite or acknowledge such arrest, or indictment or  
7 information, or conviction, or trial in response to any inquiry made of him for any purpose. The  
8 judge may waive the condition that the petitioner attend the drug education school if the judge  
9 makes a specific finding that there was no drug education school within a reasonable distance  
10 of the defendant's residence or that there were specific extenuating circumstances which made  
11 it likely that the petitioner would not benefit from the program of instruction.

12 The court shall also order that all law enforcement agencies bearing records of the  
13 conviction and records relating thereto to expunge their records of the conviction. The clerk  
14 shall forward a certified copy of the order to the sheriff, chief of police, or other arresting  
15 agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of  
16 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of  
17 Investigation shall forward the court order in like manner to the Federal Bureau of  
18 Investigation.

19 The clerk of superior court in each county in North Carolina shall, as soon as practicable  
20 after each term of court in his county, file with the Administrative Office of the Courts the  
21 names of those persons whose judgments of convictions have been cancelled and expunged  
22 under the provisions of this Article, and the Administrative Office of the Courts shall maintain  
23 a confidential file containing the names of persons whose judgments of convictions have been  
24 cancelled and expunged. The information contained in the file shall be disclosed only to judges  
25 of the General Court of Justice of North Carolina for the purpose of ascertaining whether any  
26 person charged with an offense under this Article has been previously granted cancellation and  
27 expunction of a judgment of conviction pursuant to the terms of this Article."

28 **SECTION 8.** G.S. 15A-146(a) reads as rewritten:

29 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or was  
30 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is  
31 dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the  
32 court of the county where the charge was brought for an order to expunge from all official  
33 records any entries relating to his apprehension or trial. The court shall hold a hearing on the  
34 application and, upon finding that the person had not previously received an expungement  
35 under this section, G.S. 15A-145, ~~or G.S. 90-96,~~ G.S. 15A-145.1, 15A-145.2, or 15A-145.3, and  
36 that the person had not previously been convicted of any felony under the laws of the United  
37 States, this State, or any other state, the court shall order the expunction. No person as to whom  
38 such an order has been entered shall be held thereafter under any provision of any law to be  
39 guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry  
40 made for any purpose, by reason of his failure to recite or acknowledge any expunged entries  
41 concerning apprehension or trial."

42 **SECTION 9.** G.S. 15A-146(a1) reads as rewritten:

43 "(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple  
44 offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,  
45 then a person may apply to have each of those charges expunged if the offenses occurred within  
46 the same 12-month period of time or if the charges are dismissed or findings are made at the  
47 same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court"  
48 shall mean one week for superior court and one day for district court. There is no requirement  
49 that the multiple offenses arise out of the same transaction or occurrence or that the multiple  
50 offenses were consolidated for judgment. The court shall hold a hearing on the application. If  
51 the court finds that the person had not previously received an expungement under this

1 subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or~~  
2 ~~G.S. 90-96, G.S. 15A-145, 15A-145.1, 15A-145.2, or 15A-145.3,~~ and that the person had not  
3 previously been convicted of any felony under the laws of the United States, this State, or any  
4 other state, the court shall order the expunction. No person as to whom such an order has been  
5 entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be  
6 guilty of otherwise giving a false statement or response to any inquiry made for any purpose,  
7 by reason of his failure to recite or acknowledge any expunged entries concerning apprehension  
8 or trial."

9 **SECTION 10.** G.S. 15A-145 reads as rewritten:

10 **"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of**  
11 **conviction of misdemeanor; expunction of certain other misdemeanors.**

12 (a) Whenever any person who ~~has (i) not yet attained the age of 18 years and has not~~  
13 ~~previously been convicted of any felony, or misdemeanor other than a traffic violation, under~~  
14 ~~the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is~~  
15 ~~guilty of a misdemeanor other than a traffic violation, and the offense was committed before~~  
16 ~~the person attained the age of 18 years, or (ii) not yet attained the age of 21 years and has not~~  
17 ~~previously been convicted of any felony, or misdemeanor other than a traffic violation, under~~  
18 ~~the laws of the United States, the laws of this State or any other state, (ii) pleads guilty to or is~~  
19 ~~guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense~~  
20 ~~was committed before the person attained the age of 21 years, he may file a petition in the court~~  
21 ~~where he was convicted for expunction of the misdemeanor from his criminal record. The~~  
22 ~~petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the~~  
23 ~~completion of any period of probation, whichever occurs later, and the petition shall contain,~~  
24 ~~but not be limited to, the following:~~

- 25 (1) An affidavit by the petitioner that he has been of good behavior for the  
26 two-year period since the date of conviction of the misdemeanor in question  
27 and has not been convicted of any felony, or misdemeanor other than a  
28 traffic violation, under the laws of the United States or the laws of this State  
29 or any other state.
- 30 (2) Verified affidavits of two persons who are not related to the petitioner or to  
31 each other by blood or marriage, that they know the character and reputation  
32 of the petitioner in the community in which he lives and that his character  
33 and reputation are good.
- 34 (3) A statement that the petition is a motion in the cause in the case wherein the  
35 petitioner was convicted.
- 36 (4) Affidavits of the clerk of superior court, chief of police, where appropriate,  
37 and sheriff of the county in which the petitioner was convicted and, if  
38 different, the county of which the petitioner is a resident, showing that the  
39 petitioner has not been convicted of a felony or misdemeanor other than a  
40 traffic violation under the laws of this State at any time prior to the  
41 conviction for the misdemeanor in question or during the two-year period  
42 following that conviction.
- 43 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
44 representing amounts ordered for restitution entered against him are  
45 outstanding.

46 The petition shall be served upon the district attorney of the court wherein the case was  
47 tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file  
48 any objection thereto and shall be duly notified as to the date of the hearing of the petition.

49 The judge to whom the petition is presented is authorized to call upon a probation officer  
50 for any additional investigation or verification of the petitioner's conduct during the two-year  
51 period that he deems desirable.

1 (b) If the court, after hearing, finds that the petitioner had remained of good behavior  
2 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two  
3 years from the date of conviction of the misdemeanor in question, the petitioner has no  
4 outstanding restitution orders or civil judgments representing amounts ordered for restitution  
5 entered against him, and (i) petitioner was not 18 years old at the time of the ~~conviction-offense~~  
6 in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction-offense~~ of  
7 possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be  
8 restored, in the contemplation of the law, to the status he occupied before such arrest or  
9 indictment or information. No person as to whom such order has been entered shall be held  
10 thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false  
11 statement by reason of his failure to recite or acknowledge such arrest, or indictment,  
12 information, or trial, or response to any inquiry made of him for any purpose.

13 (c) The court shall also order that the said misdemeanor conviction, or a civil  
14 revocation of a drivers license as the result of a criminal charge, be expunged from the records  
15 of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles,  
16 bearing record of the same to expunge their records of the conviction or a civil revocation of a  
17 drivers license as the result of a criminal charge. This subsection does not apply to civil or  
18 criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.  
19 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other  
20 arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor  
21 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is  
22 also expunged. The civil revocation of a drivers license shall not be expunged prior to a final  
23 disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff,  
24 chief or head of such other arresting agency shall then transmit the copy of the order with a  
25 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the  
26 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

27 (d) The clerk of superior court in each county in North Carolina shall, as soon as  
28 practicable after each term of court in his county, file with the Administrative Office of the  
29 Courts, the names of those persons granted a discharge under the provisions of this section, and  
30 the Administrative Office of the Courts shall maintain a confidential file containing the names  
31 of persons granted conditional discharges. The information contained in such file shall be  
32 disclosed only to judges of the General Court of Justice of North Carolina for the purpose of  
33 ascertaining whether any person charged with an offense has been previously granted a  
34 discharge.

35 (d1) Notwithstanding subsection (a) of this section and any other provision of law, a  
36 person may file a petition in the court where the person was convicted for expunction of a  
37 misdemeanor conviction from the person's criminal record if the person was convicted for  
38 misdemeanor larceny under G.S. 14-72(a) more than 10 years prior to the filing of the petition  
39 using the procedure set forth in this section.

40 (e) A person who files a petition for expunction of a criminal record under this section  
41 must pay the clerk of superior court a fee of one hundred twenty-five dollars (\$125.00) at the  
42 time the petition is filed. Fees collected under this subsection shall be deposited in the General  
43 Fund. This subsection does not apply to petitions filed by an indigent."

44 **SECTION 11.** This act becomes effective December 1, 2009, and applies to  
45 petitions for expunctions filed on or after that date.